

Special and Regular Meeting of March 27, 2012
City Council Chambers, One Twin Pines Lane

SPECIAL MEETINGS

CLOSED SESSION – 7:00 P.M.

A. Conference with Legal Counsel pursuant to Government Code Section 54956.9, subdivision (b)(3)(C): (One claim) BFI Waste Systems/Allied Waste (November 8, 2011)

B. Conference with Legal Counsel pursuant to Government Code Section 54956.9 (c), Initiation of Litigation: One Case

Attended by: Councilmembers Wozniak, Warden, Lieberman, Braunstein, City Manager Scoles, City Attorney Rennie, Public Works Director Oskoui (Item B only). Councilmember Feierbach was absent and City Clerk Cook was excused from attending.

ADJOURNMENT at this time being 7:50 P.M.

Terri Cook
Belmont City Clerk

This meeting was not tape recorded or videotaped

REGULAR MEETING
CALL TO ORDER 8:00 P.M.

ROLL CALL

COUNCILMEMBERS PRESENT: Lieberman, Wozniak, Braunstein, Warden

COUNCILMEMBERS ABSENT: Feierbach

Staff Present: City Manager Scoles, City Attorney Rennie, Police Chief Mattei, Community Development Director de Melo, Finance Director Fil, Public Works Director Oskoui, Human Resources Director Dino, Deputy Finance Director Lazzari, City Treasurer Violet, City Clerk Cook

REPORT FROM CLOSED SESSION

City Attorney Rennie stated that direction was given but no action taken on Closed Session Item A. He stated that for Item B, direction was given to initiate an action. The action, the defendants, and the other particulars will be disclosed once litigation is formally commenced, to any person upon inquiry, unless to do so would jeopardize the city's ability to effectuate service of process on one or more unserved parties or if disclosure at that time would jeopardize the City's ability to conclude settlement negotiations, if any.

PUBLIC COMMENTS AND ANNOUNCEMENTS

Mike Elkins, Notre Dame de Namur University, announced an upcoming production of the play "Our Town". He noted that images of the City of Belmont being used in the production were being supplied by the Belmont Historical Society.

Mayor Warden noted that former Councilmember Metropulos has the lead in the play.

Stephanie Biehl, Notre Dame de Namur University student, stated that the Associated Students were participating in a clothing drive to benefit the Samaritan house. She described the recent Dance-A-Thon to benefit the restoration of Ralston Hall, and noted that funds were still being raised.

George Burgess, Belmont Chamber of Commerce, announced an upcoming opportunity for a shuttle grant which is being supported by the Chamber's Transportation Committee. He outlined the timeline for the grant and explained that if the deadline is missed, Belmont would not be able to reapply for four years.

Amy Goldfarb, Belmont resident, requested clarification regarding Safeway's proposed expansion of its El Camino store.

Community Development Director de Melo explained that Safeway will be submitting a Preliminary Design Review and will hold a neighborhood outreach meeting on April 18th. He stated that this matter is tentatively scheduled for preliminary design review at an upcoming City Council meeting.

COUNCIL MEMBER COMMENTS AND ANNOUNCEMENTS

Councilmember Wozniak noted that staff is working on the shuttle grant program described by Chamber President Burgess earlier. She noted that C/CAG (Cities/Counties Association of Governments) and other entities will be applying for the grant. She explained that the matching fund was reduced in order to solicit more applications. She expressed appreciation that the Chamber of Commerce is championing this issue.

City Manager Scoles clarified that staff will be requesting approval from the City Council at the April 10th meeting to proceed with the shuttle grant application.

Public Works Director Oskoui clarified that the shuttle route cannot parallel Sam Trans routes, and that the grant would need concurrence from Sam Trans prior to submission.

AGENDA AMENDMENTS

City Clerk Cook noted that members of the public requested the removal of Consent Item 4-C (Resolution Approving 56-feet of No Parking on 1000 Block of O'Neill Avenue at Sixth Avenue) for separate consideration.

ITEMS APPROVED ON CONSENT CALENDAR

Approval of Minutes of Special and Regular Meeting of February 28, 2012, and Special Meeting of March 7, 2012 (Commission Interviews)

Approval of Resolution 2012-030 Authorizing a Professional Services Agreement Amendment #3 with Turbo Data Systems for Administrative Citation Processing and Adjudication Services

Approval of Resolution 2012-031 Authorizing Payment for the Emergency Repair Work on Easement Sewer Main located at Immaculate Heart of Mary School for an Amount not to Exceed \$12,513

Approval of Resolution 2012-032 Making a Declaration with Respect to Loan, Advance or Indebtedness Forgiveness in Compliance With Health and Safety Code Section 33354.8

ITEM REMOVED FROM CONSENT CALENDAR FOR SEPARATE CONSIDERATION

Resolution Approving 56-feet of No Parking on 1000 Block of O'Neill Avenue at Sixth Avenue

Public Works Director Oskoui stated that the street improvements made to this area have resulted in the narrowing of lanes and impact the turning radius of vehicles. He explained that this puts cars in conflict with each other and affects pedestrian safety. He noted that the owner of Beli Deli was contacted about this proposed change in parking.

Jerry Boyle, Belmont resident, expressed support for the elimination of parking in front of the Emmett House but not with the elimination of parking in front of Beli Deli. He stated that the development of the Emmett House has impacted parking.

Public Works Director Oskoui clarified that one space in front of Beli Deli will remain, and that a ten-foot minimum clearance is required at the stop sign.

Discussion ensued.

Gin Nikoloff, Beli Deli owner, explained that 35 feet of parking is needed for loading and unloading. She concurred with the need for some red curb in the area. She commented regarding the impact to her business that she experienced during the street reconstruction and the confusion to drivers due to poor signage.

Public Works Director Oskoui recommended that the City Council authorize up to 16 feet of parking and allow flexibility for staff to work out the details of placement.

ACTION: Councilmember Wozniak made a motion to approve the resolution to include flexibility for staff as noted by Public Works Director Oskoui. Mayor Warden offered a friendly amendment to give authority to the Public Works Director, said amendment accepted by Councilmember Wozniak.

ACTION: On the motion made by Councilmember Wozniak, amended by Mayor Warden, and seconded by Councilmember Lieberman, Resolution 2012-033 Approving 56-feet of No Parking on 1000 Block of O'Neill Avenue at Sixth Avenue was unanimously approved, as amended, by a show of hands (4-0, Feierbach absent).

OLD BUSINESS

Discussion and Direction Regarding the Sewer Lateral Program

Public Works Director Oskoui stated that this matter was last discussed by the City Council in May of 2011 when it requested that staff develop a plan to address sewer laterals. He explained that residents and business owners are often confused regarding responsibility for the lateral, which rests on the property owner. He further explained inflow and infiltration (I and I) result in

a burden on the treatment plant due to treatment of clean water. He noted that there is a potential for sewer overflows which could result in fines being levied.

Public Works Director Oskoui reviewed flow data for the various sewer basins with the City of Belmont, and noted that some basins exceed capacity during wet weather. He explained that a sewer lateral program can assist with improving the infrastructure, which could result in cost savings to the rate payers. He outlined the elements of the program which include a public education campaign, smoke testing, permit-driven video inspection program, enforcement, and FOG (fats, oils and grease).

In response to Council questions, Public Works Director Oskoui explained that the homeowner is responsible for the section of lower lateral that may be located within the public right-of-way, the repair of which can sometimes require digging into the street.

Mayor Warden noted that it is often difficult to find a plumber that will address the lower lateral, and repairs can be expensive. He stated that the City will clean out the lower lateral as a courtesy.

Councilmember Lieberman suggested a future discussion regarding ways to address lower laterals.

Public Works Director Oskoui stated that providing financing for repairs to laterals would have a financial impact to the City. He explained that some cities have programs that are available through the levy of fines. He noted that smoke testing is one of the most effective tools as it covers a wider area more quickly. He suggested consideration for the installation of backflow preventers in a future municipal code amendment. He clarified that backflow preventers are often recommended when claims for sewer backups are made, and the City Council may want to make them mandatory in certain circumstances.

Councilmember Lieberman stated that I and I is high in wet weather and the sewer treatment plant cannot process the volume it receives during these times. He explained that the overflow is diverted to holding ponds, and the South Bay System Authority has begun discussions regarding the payment for holding ponds. He noted that costs are likely to rise.

Councilmember Wozniak expressed a desire to provide for more in the sewer lateral program such as mandatory inspections at point of sale and the requirement of inspection with the addition of square footage to a building. She noted that the City has only achieved 50 percent compliance following smoke testing.

Councilmember Braunstein concurred with Councilmember Wozniak, and noted that requiring an inspection at the point of sale provides consumer protection.

Councilmember Lieberman expressed support for the sewer lateral program as proposed.

City Attorney Rennie confirmed that an ordinance would be needed to require an inspection at point of sale.

Mayor Warden expressed support for the proposed program. He noted that although requiring an inspection at point of sale would capture a small number of homes sold, he would support the requirement in order to capture additional problems. He noted this provides a public service.

RECESS: 9:30 P.M.

RECONVENE: 9:35 P.M.

In response to Councilmember Wozniak, City Manager Scoles indicated that changing the requirements for sewer lateral inspection for additional permits would be relatively simple to implement. He recommended doing some outreach on the issue of the point of sale requirement.

ACTION: Councilmember Lieberman made a motion to approve the implementation of the Five-Point Sewer Lateral Program. This motion died for lack of a second.

ACTION: Councilmember Wozniak made a motion to approve the Five-Point Sewer Lateral Program and to direct staff to explore requirements for lateral inspection at point of sale, and to require an inspection upon the request for a permit on a factor based on valuation of a project.

Councilmember Lieberman proposed a friendly amendment to set the valuation at \$50,000. Councilmember Wozniak accepted the amendment.

ACTION: On the motion by Councilmember Wozniak, amended by Councilmember Lieberman, and seconded by Councilmember Braunstein, and approved by a show of hands (3-1, Lieberman no, Feierbach absent) to approve the Five-Point Sewer Lateral Program, to require lateral inspections for projects with a value of \$50,000 or more, and to direct staff to explore requirement for inspection at point of sale.

Review of City Council Protocols (held over from March 13, 2012)

City Clerk Cook noted that this item is a continuation of the Council's previous discussion. She explained that the red-line version of the Protocols attached to the staff report included all the revisions for which there was concurrence at the previous meeting.

City Attorney Rennie recommended that the City Council adopt a policy which would address the use of electronic devices by the City Council during meetings. He expressed his concern regarding potential violations of the Brown Act, and explained that City Council meetings are quasi-judicial proceeds requiring due process. He noted that other cities have such policies. He explained that the policy is meant to be protective.

In response to Councilmember Wozniak, City Attorney Rennie stated that this is an issue of awareness and personal liability, and a policy could address concerns without making it a mandate. He noted this could be a matter of actual versus perceived violations, and that if the City has no policy, a complaint could result in court action, which he is trying to prevent.

Councilmember Lieberman stated that public perception needs to be addressed. He noted that he has observed texting on the dais in the past, and that City Councilmembers need to be able to receive messages from family members.

Discussion ensued about the receipt of last-minute emails regarding items on the agenda.

Councilmember Wozniak expressed support for the adoption of a policy, and noted that she does not have a desire to limit the ability to use technology. City Attorney Rennie explained that a policy would not be incompatible with the desire to be paperless, but is an issue of connectivity during a meeting. He clarified that documents can be downloaded to whatever device is being used.

Councilmember Wozniak stated for the record that she does not text during meetings.

Councilmembers Lieberman and Braunstein expressed support for enactment of a policy.

Council concurred to have the City Attorney draft a policy for future consideration.

George Burgess, Belmont Chamber of Commerce, voiced his objection to the current process for selecting Mayor and Vice Mayor. He suggested using tenure of the Councilmembers or a vote of the people. He noted that during the recent selection the City Council overlooked the voice of the people.

Discussion ensued regarding the amount of time prior to a meeting required to post an agenda at a teleconferencing location. City Attorney Rennie suggested adding verbiage that would require six hours posting or as soon as feasible.

Discussion ensued regarding the group email for City Council.

Mayor Warden expressed a desire to have a group email address solely for the City Council which would not include any staff member. Council concurred.

Councilmember Wozniak noted that the City's current Facility Use policy provides that candidates for office have the ability to use a City facility at no charge. City Attorney Rennie stated that the law is restrictive on the free use of facilities for non-public use.

City Clerk Cook suggested that this policy could be addressed during the upcoming Budget cycle.

Discussion ensued regarding the proposed new combined agenda. Councilmember Braunstein suggested moving Council Item 9's (Matters of Council Interest) further up on the agenda. Councilmember Lieberman concurred, and noted that it is often late in the evening before these items are discussed.

Councilmember Wozniak expressed support for moving the agenda item if reports are brief, and noted that these items can be lengthy. She expressed a desire to not have too many items at the

beginning of the meeting, and recommended that Councilmembers produce written reports on their Intergovernmental assignments.

Mayor Warden expressed concern that the City Council does not get to critical agenda items until late. He noted that information on Intergovernmental Assignments could be disseminated prior to the Council meeting. He recommended eliminating this section from the agenda and the information distributed electronically.

MEETING EXTENSION: At this time, being 10:30 P.M., on a motion by Councilmember Lieberman, seconded by Councilmember Braunstein, the meeting was unanimously extended for 30 minutes by a show of hands (4-0, Feierbach absent).

Councilmember Braunstein commented regarding the Mayor and Vice Mayor selection procedures. He expressed a desire that unless a Councilmember has an egregious legal problem, all should be rotated through the process.

Councilmember Wozniak stated that having an automatic rotation could be problematic in certain circumstances.

Mayor Warden stated that the City Council had an automatic rotation at one time that did not work. He stated that sometimes a Councilmember did not want to be Mayor, and he commented that he would not want to be Mayor if three Councilmembers did not want him to be Mayor. He explained that most cities do not have a rotation. He suggested that Belmont should have a directly-elected Mayor, and he noted that he will propose such a ballot measure.

Councilmember Lieberman concurred with the comments made by Mr. Burgess. He stated that tenure on the City Council should be the first consideration, and the number of votes received should be used for tie breakers. He noted that the City Council could deal with special circumstances. He also noted that the public has asked for an explanation regarding the recent Mayor and Vice Mayor selection, and that having a process for rotation would have been well served in that case. He noted that the public has expressed disappointment in behaviors.

Mayor Warden stated that the reorganization meeting was not the time to address this situation. He stated that he does not desire to be locked into a rotation.

Discussion ensued regarding the process for directly-elected Mayors.

In response to Councilmember Braunstein, City Clerk Cook noted that the Government Code sets forth a requirement that the City Council meet at least once per month. She clarified that some charter cities may not have this requirement.

MEETING EXTENSION: At this time, being 11:00 P.M., on a motion by Councilmember Wozniak, seconded by Councilmember Braunstein, the meeting was extended for 30 minutes by a show of hands (3-1-0, Warden no, Feierbach absent).

Discussion ensued regarding speaker decorum. In response to Councilmember Braunstein, City Clerk Cook pointed out that behavioral expectations of audience members is addressed on the reverse side of the speaker slip. She also noted that if there are problems, the microphone can be turned off and the Mayor can call for a recess.

Councilmember Lieberman stated that if a Councilmember is requested to participate in a meeting by a staff member, his expectation is that the Councilmember will report out at the subsequent Council meeting.

Discussion ensued regarding the mechanisms for requesting participation in meetings by Councilmembers.

Mayor Warden suggested that the City Council be advised when such an invitation or request has been made.

Councilmember Wozniak requested that the City Manager take responsibility for the on-line Master Calendar to ensure that the information is up to date.

City Clerk Cook noted that the amended Protocols would be brought back to the City Council for final approval after the City Attorney has an opportunity to draft the internet access policy, which will be included in the final document.

COMMISSION, COMMITTEE, AND COUNCIL INTERGOVERNMENTAL ASSIGNMENT UPDATES, AND STAFF ITEMS

Resolution Making An Appointment to the Vacant Position on the Finance Commission

City Clerk Cook noted that the City Council took action at the March 13th meeting to appoint three members of the Finance Commission, and additional action is required to appoint one of those candidates to the one-year vacant seat.

ACTION: Councilmember Lieberman made a motion, seconded by Councilmember Braunstein, to appoint Tracy Patel to a vacant term on the Finance Commission, said term to expire in March of 2013. This motion failed by a show of hands (2-2-0, Lieberman/Braunstein yes, Warden/Wozniak no, Feierbach absent).

Mayor Warden indicated that he supports appointing Ms. Patel to a full three-year term.

ACTION: Councilmember Lieberman made a motion, seconded by Councilmember Braunstein, to appoint Thomas McCune to a vacant term on the Finance Commission, said term to expire in March of 2013. This motion failed by a show of hands (2-2-0, Lieberman/Braunstein yes, Warden/Wozniak no, Feierbach absent).

(The following represents verbatim comments of this portion of the discussion before the next motion, which was requested by the City Council to be included in the minutes.)

Mayor Warden: Would you care to try another motion?

Councilmember Lieberman: No, because I actually believe if we appoint Lynnel to the one-year term it's an incredible slap in the face to someone who's an incumbent, so I didn't think that that was the direction that Council was going to go.

Councilmember Wozniak: Well, I think that in line with what you have said about votes, the two new people did get five votes and Lynnel got four. So I will move that the two new people get the four-year term – three-year term, and Lynnel gets the one-year term. That's my motion.

ACTION: Councilmember Wozniak made a motion, seconded by Mayor Warden, to appoint Lynnel Callagy to a vacant term on the Finance Commission, said term to expire in March of 2013. This motion failed by a show of hands (2-2-0, Warden/Wozniak yes, Lieberman/Braunstein no, Feierbach absent).

ACTION: Mayor Warden made a motion, seconded by Councilmember Lieberman, Resolution 2012-034 appointing Thomas McCune to a vacant term on the Finance Commission, said term to expire in March of 2013, was approved by a show of hands (3-1-1, Braunstein no, Feierbach absent).

Verbal report from Councilmembers on Intergovernmental (IGR) and Subcommittee Assignments

Councilmember Wozniak reported her attendance at a recent Regional Housing Needs Assessment (RHNA) meeting. She stated that she attended an Eagle Scout awards ceremony and noted the outstanding work being performed by Eagle Scout recipients.

Verbal Report from City Manager

City Manager Scoles noted that the first Successor Agency Oversight Board meeting would be held on April 9th. He also reported that AB 1585, which provides cleanup legislation for the Redevelopment Agency issue, passed the Assembly and has been moved onto the Senate. He stated that the City of Belmont received a San Francisco Business Times Award in conjunction with Sun Edison's recent expansion to Belmont. He noted that this was accomplished with assistance from the Redevelopment Agency. He also stated that staff would be in contact with the City Council to schedule a priority calendar discussion.

ADJOURNMENT at this time, being 11:26 P.M.

**Terri Cook
City Clerk**